8. Data deletion and retention

The basic principles on data protection to be observed by **all Siemens employees** are listed in the Chapter "Data Privacy: Responsibility" ([Chapter Part 1 D.1](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-1-Activity-Fields,D.-Data-Privacy,1.-Responsibility).).

This Chapter compiles the special obligations for data deletion and retention that must be observed by **Compliance employees** in the context of Compliance Case Handling[[1]](#footnote-1), as well as Discipline and Remediation.

In this context, it is important to take into account the particular tension between obligations regarding retention periods imposed by authorities or by law on the one hand, and the obligation for data economy and, above all, deletion on the other.

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| **What every Compliance employee must know:**   * Personal data must be deleted[[2]](#footnote-2) ([Chapter Part 3 L.8.2.)](#_8.2._Datenlöschung) when the purpose for processing the data no longer exists, unless retention obligations or rights ([Chapter Part 3 L.8.1](#_8.1.1._Gesetzliche_Aufbewahrungspfl).) exist (Art. 17 GDPR). * The purpose of processing personal data in Compliance Case Handling is to ensure a functioning Compliance system, depending on the date in the form of * the Case Handling, i.e., the investigation of allegations of possible Compliance violations ([Chapter Part 3 L.2](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,2.-Case-Handling)) * responding to such violations, including appropriate Disciplinary Measures ([Chapter Part 3 L.4](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,4.-Disciplinary-Measures)), * the Remediation of weaknesses in processes ([Chapter Part 3 L.5](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,5.-Remediation)), * the handling of information requests from authorities ([Chapter Part 3 L.7.1](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,7.-Dealing-with-public-authorities-and-other-third-parties,7.1.-Information-requests).), * the fulfillment of legal requirements (e.g. disclosure obligations, searches) ([Chapter Part 3 L.7.1](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,7.-Dealing-with-public-authorities-and-other-third-parties,7.1.-Information-requests).) or * the pursuit of damage claims or other consequential issues (e.g. financial or tax implications). |

## 8.1. Data retention obligations and rights

Insofar as no deviating regulations on data retention for Compliance Case Handling apply, the Siemens Guideline on retention obligations and periods ([Leitfaden zu Aufbewahrungspflichten und -fristen](https://lkb.siemens.com/content/00000008/LegalKnowledgeBase/y1t6v041dbqp/LKB002358.pdf) - only available in German) apply. In particular, in the context of Compliance Case Handling, the statutory retention **obligations** ([Chapter L.8.1.1](#_8.1.1._Anwaltsakten).) and the retention **rights** in Siemens' own interest ([Chapter L.8.1.2.)](#_8.1.2._Retention_rights) must be observed.

### 8.1.1. Legal retention obligations

Of particular interest in Compliance Case Handling are the retention obligations for lawyers` files ([Chapter L.8.1.1.1.),](#_8.1.1.1._Lawyers`_files) individual German statutory retention obligations ([Chapter L.8.1.1.2](#_8.1.1.2._Besondere_gesetzliche).) and the applicable national statutory retention obligations ([Chapter L.8.1.1.3](#_8.1.1.3._Sonstige_nationale).).

#### 8.1.1.1. Lawyers` files

According to German law[[3]](#footnote-3), a lawyer shall retain files for **6 years** after the end of the calendar year, in which he/she has brought a case to a conclusion, in order to be able to give an orderly account of his professional work.

Files include

* originals or copies of documents received for or on behalf of the client on grounds of lawyers’ professional practice,
* correspondence between the lawyer and the client and/or
* any other document necessary to comprehend the case.

This applies accordingly in as far as the lawyer uses electronic data processing in order to keep files, such as LIA[[4]](#footnote-4), but it does not apply to data stored in other LC CO IR tools, such as FCMS[[5]](#footnote-5)/Recommind[[6]](#footnote-6) data. However, evidence extracted from FCMS/Recommind data becomes part of the file stored in LIA and thus of the lawyers’ file, as far as such evidence is necessary to comprehend the case.

#### 8.1.1.2. Individual German statutory retention obligations

According to the **German Money Laundering Act** (Geldwäschegesetz), there is a **5-year** retention obligation for all data collected and information obtained in the course of fulfilling due diligence obligations[[7]](#footnote-7).

Under **German Securities Trading Law** (Wertpapierhandelsgesetz), there is a retention obligation of **5 years[[8]](#footnote-8)**.

According to the **German Fiscal Code** (Abgabenordnung) and the **German Commercial Code** (Handelsgesetzbuch), original invoices and underlying contractual and tax-related documents, i.e. in particular contracts with external lawyers, must be retained for **10 years[[9]](#footnote-9)**.

#### 8.1.1.3. Further national statutory retention obligations

If the national law applicable in the specific case prescribes further retention periods, these must be observed separately. For details, please refer to the applicable national regulations and case law.

### 8.1.2. Retention rights in Siemens' own interest

A data retention **right** results from how long it is justified under data protection law, i.e. necessary for Siemens in the respective individual case, to take into account collected personal data in the context of a Compliance investigation ([Chapter L.8.1.2.1:`Legal Hold`)](#_8.1.2.1._Legal_Hold) or also with regard to imminent or pending damage claims, criminal or administrative fines proceedings ([Chapter L.8.1.2.2.: Statutory Limitation Periods).](#_8.1.2.2._Statutory_Limitation)

#### 8.1.2.1. Legal Hold

A right of retention may arise in the course of a Compliance investigation. After a Compliance investigation has been initiated, LC CO IR may issue a **Legal Hold**[[10]](#footnote-10) (see [Siemens Circular 226 Chapter 5.2](https://srs.siemens.cloud/#/c/fs8o2k).). This is an instruction to employees in the course of a Compliance investigation not to delete specified data (retention obligation).

#### 8.1.2.2. Statutory Limitation Periods

A further right to data retention in Compliance Case Handling arises due to imminent or pending damage claims and criminal or administrative fines proceedings. In this context, the applicable statutory periods of limitation must be taken into account, which justify further retention prior to their expiry.

German Administrative and Criminal Law

Depending on the exact allegations, the relevant statutory limitation period under German Administrative and Criminal Law is generally 6 months to 3 years and 3 to 5 years respectively after the offence has been completed. For practicability reasons, we assume that the beginning of the limitation period in our Compliance cases is near to case closing. However, if a result constituting an element of the offence occurs later, the limitation period shall commence to run from that time[[11]](#footnote-11). Such a result could occur several years following case closing (e.g. ongoing payment under long-term contracts obtained by fraudulent or corruptive means).

German Tax Laws

Limitation period under relevant German Tax Laws is 4 to 10 years[[12]](#footnote-12).

German Civil Law

For civil damage claims under German Civil Law relevant limitation period is 3 years starting at the end of the year in which the claim arose up to 30 years in case of excusable lack of claimant’s knowledge of the circumstances giving rise to the claim and the identity of the obligor[[13]](#footnote-13).

FCPA/UK Bribery Act

Similar applies under FCPA provisions, especially in case of conspiracy[[14]](#footnote-14), while under the U.K. Bribery Act there is no formal statute of limitations at all[[15]](#footnote-15).

German Stock Corporation Law

Additionally, Siemens management can be held liable for damage caused by not having duly organized the Compliance procedures for a period of 10 years, with the burden of proof for having applied the necessary diligence lying upon them[[16]](#footnote-16).

## 8.2. Data deletion

Once the Compliance case or process is closed, the data is generally no longer required for the purpose for which it was collected or otherwise processed and must be deleted subject to the retention obligations and rights mentioned above (see [Chapter L.8.1](#_8.1._Data_retention).), as well as other national regulations applicable in the specific case.[[17]](#footnote-17)

Data deletion shall be observed at each and every step of the [Compliance Case Handling process](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,1.-Process-Principles,1.-Process-Overview) up to and including disciplinary measures and remediation.

The deletion of all personal data takes place:

* **Immediately** in the case of obviously abusive or unsubstantiated information as well as in the case of information which already after a rough examination turns out to be obviously unsubstantiated and are not based on sufficient grounds for suspicion.
* After **4 months** in the case of data collection requests ([Part 3 Chapter L.2.4.5](https://webbooks.siemens.com/public/LC/chen/index.htm?n=Part-3-Compliance-Internal-Tasks,L.-Case-Handling,-Discipline-and-Remediation,2.-Case-Handling,2.4.-Investigation-process-for-allegations,2.4.5.-Data-collection).).
* After **5 years** of all data in the case of Compliance with the retention obligations under the German Securities Trading Act[[18]](#footnote-18).
* After **6 years** in the case of Clearance, Closure Reports and all other Compliance cases that were closed without Findings or Compliance cases that were closed as implausible or duplicate.[[19]](#footnote-19)
* After **10 years** in the case of Investigation Reports and all other compliance cases closed with Findings[[20]](#footnote-20), and in the case of original invoices and underlying contractually and fiscally relevant documents (e.g. attorney compensation agreements, time sheets)[[21]](#footnote-21),
* After **15 years** in the case of disciplinary proceedings and actions following Compliance investigations[[22]](#footnote-22).

The deletion period begins

* for data collection orders, immediately after the lawyer closes the case,
* otherwise, after the end of the calendar year in which the lawyer closed the case, or
* for original invoices and underlying contractual and tax-related documents, after the end of the calendar year in which the document was created, or
* after the end of the year in which the disciplinary measure was imposed.

For deletion periods of the reports of all Compliance Case Handling Tools, please refer to the deletion periods in the respective report of the CDP Center.

## 8.3. Training and supporting material

For support and guidance on relevant retention and deletion periods, see the Siemens Guideline on retention obligations and periods ([Leitfaden zu Aufbewahrungspflichten und -fristen](https://lkb.siemens.com/content/00000008/LegalKnowledgeBase/y1t6v041dbqp/LKB002358.pdf) - only available in German).

## 8.4. History of changes

|  |  |  |
| --- | --- | --- |
| **Date** | **Author** | **Major changes of binding content** |
| April, 1, 2021 | Yvonne Hamm-Düppe | New Chapter L.8: Transition and consolidation of key Compliance Case Handling regulations from the "LC CO Data deletion and retention policy" (dated Oct. 1, 2014, last amended Aug. 3, 2019); concurrently: repeal of the "LC CO Data deletion and retention policy." |

## 8.5. Contacts

* Compliance Officer

The Compliance Officer responsible for your unit can be found through the following [link](https://intranet.for.siemens.com/cms/059/en/about/org/Pages/compliance_organization.aspx).

* Corporate Governance Owner

[Annette Kraus (LC CO IR)](https://soc.siemens.cloud/profile/Z002K99S)

1. For the purposes of this Chapter, Compliance Case Handling means all processes with which Investigation Regulatory (LC CO IR) deals in terms of content. [↑](#footnote-ref-1)
2. For Germany please also see [No. 3.8. Annex 2 & no. 6.2. Annex 3 to CHR Circular No. 44/15 1st Amendment of 21 September 2016 („Konzernbetriebsvereinbarung über das ‚Siemens-Compliance-System‘)](https://wse04.siemens.com/content/P0006195/Shared%20Documents/dir2010_2019/2015/HRRS201544_03_KBV_Compliance_System.pdf). [↑](#footnote-ref-2)
3. (Sec. 50 BRAO) [↑](#footnote-ref-3)
4. Siemens Legal & Compliance Document Management System / matter archive [↑](#footnote-ref-4)
5. Siemens Compliance Forensic Case Management System [↑](#footnote-ref-5)
6. Siemens Legal & Compliance data analytics tool [↑](#footnote-ref-6)
7. (Sec. 8 GWG) [↑](#footnote-ref-7)
8. (Sec. 83 WpHG) [↑](#footnote-ref-8)
9. (Sec. 147 AO, Sec. 257 HGB) [↑](#footnote-ref-9)
10. The obligation to retain all possible documents within the scope of an "Investigation/Litigation Hold" issued by LC C LIT is detailed in the Guideline on Retention Obligations and Periods in section 2.4.1. ([Leitfaden zu Aufbewahrungspflichten und -fristen](https://lkb.siemens.com/content/00000008/LegalKnowledgeBase/y1t6v041dbqp/LKB002358.pdf)). Siemens Circular 207 (“Obligation to retain documents after the conclusion of the independent compliance investigation”) related to the “Debevoise Investigation” end of 2006 has been archived and substituted by a “Legal Hold”. [↑](#footnote-ref-10)
11. See sec. 78(3),(4), 78a StGB and sec. 31 (2),(3) OWiG; for details please refer to the StGB or any applicable special statues and case law. [↑](#footnote-ref-11)
12. See sec.169 (2) no. 2, 170, 370 AO¸ for details please refer to the relevant tax laws or any applicable special statues and case law. [↑](#footnote-ref-12)
13. See sec. 195, 199 (1) BGB; for details please refer to the BGB or any applicable special statues and case law. [↑](#footnote-ref-13)
14. A 5-years limitation period generally applies under FCPA, whereas conspiracy is deemed to be a “continuing offence” extending limitation period (see 18 U.S.C. §3282); the limitations period may also be extended by a tolling agreement, or the government may apply for an extension of up to 3 years in order to obtain evidence from foreign countries (18 U.S.C. § 3292); for civil actions see 28 U.S.C. §2462. [↑](#footnote-ref-14)
15. When deciding whether to prosecute an allegation, the competent U.K. authorities will decide on the basis of (i) the evidence and (ii) the public interest (see bribery Act 2010: Joint Prosecution Guidance of the Director of the Serious Fraud Office and the Director of Public Prosecutions, p. 4 et seq.). [↑](#footnote-ref-15)
16. Sec. 93 para. 6 AktG – in combination with sec. 93 para. 2, sec. 91 para. 2 AktG. [↑](#footnote-ref-16)
17. For Germany please also see [No. 3.8. Annex 2 & no. 6.2. Annex 3 to CHR Circular No. 44/15 1st Amendment of 21 September 2016 („Konzernbetriebsvereinbarung über das ‚Siemens-Compliance-System‘)](https://wse04.siemens.com/content/P0006195/Shared%20Documents/dir2010_2019/2015/HRRS201544_03_KBV_Compliance_System.pdf) [↑](#footnote-ref-17)
18. (Sec. 83 Abs. 8 WpHG) [↑](#footnote-ref-18)
19. The closure of the case is usually documented by the closure of the case in TRACI by the respective case lawyer (regulated by [Konzernbetriebsvereinbarung on the IT procedure "TRACI" CHR Circular no. 065/09 dated 31.07.2009, 8th addendum dated 19.01.2017](https://wse04.siemens.com/content/P0006195/Shared%20Documents/dir2010_2019/2009/CHRRS6509_8.pdf)). [↑](#footnote-ref-19)
20. The purpose of retention here is, on the one hand, that Siemens requires the data for the establishment, exercise or defense of legal claims. This applies during the statutory limitation period in which proceedings may be initiated or claims may be asserted by or against Siemens. On the other hand, retention is necessary to protect Siemens' legitimate interests; in particular, information on convictions for certain criminal offenses is usually required for participation in public tenders. See also obligation to delete pursuant to Section 8 (4) GWG. [↑](#footnote-ref-20)
21. See in detail Guideline on Retention Obligations and Periods ([Leitfaden zu Aufbewahrungspflichten und -fristen](https://lkb.siemens.com/content/00000008/LegalKnowledgeBase/y1t6v041dbqp/LKB002358.pdf)) [↑](#footnote-ref-21)
22. The purpose of retention here is to conduct the so-called `Compliance Check` as a basis for recruitment/promotion decisions for important key positions at Siemens. The Siemens AG interest includes the company-wide interest, see Art. 6 (1) f) GDPR. [↑](#footnote-ref-22)